

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

15-CR-179-FPG

DONALD GARDNER, JR.,

Defendant.

SPEEDY TRIAL ORDER

(February 7, 2018 through February 28, 2018)

On February 7, 2018, the parties appeared before the Court for a status conference. Assistant United States Attorney Mary C. Baumgarten appeared on behalf of the government. The defendant appeared personally and with his attorney, AFPD Frank R. Passafiume.

At that time, the government advised the Court that an approved plea was offered to the defendant, that was accepted by him, and that a plea proceeding was scheduled before the District Court to occur in Rochester, New York on the first available date of February 15, 2018 at 11:00 a.m. The parties requested a status conference thereafter, in the event the plea did not proceed as scheduled. The government moved for the exclusion of time from the Speedy Trial Act on the basis that the additional time was required and would be used to enter into the favorable plea negotiated on behalf of the defendant, and that the interests of justice in resolving the case in a plea, versus by a trial, and if convicted, with an appeal, outweighed the interest of the public and the defendant in a speedy trial. The defendant did not oppose the motion for additional time or object to the exclusion of time from the Speedy Trial Act.

The Court granted the request for an additional status conference, and scheduled a status conference for February 28, 2018 at 10:00 a.m. Based on the representations of the parties, the Court excluded the time in this action from February 7, 2018 through and including February 28, 2018, pursuant to 18 U.S.C. §§ 3161(h)(1)(A) and (h)(7)(B)(iv), after having found that granting the continuance is in the interest of justice and not contrary to the interests of the public and the defendant in a speedy trial.

Specifically, and for the reasons set forth above, the Court determines that the public's interest in conserving resources by avoiding needless pretrial litigation, the time and expense of a trial and a likely appeal, and combined with the certainty of conviction obtained through a plea of guilty by the defendant, outweigh the public's interest in a speedy trial. Further, the defendant's interest in obtaining the benefit of a more favorable plea and the possibility of a lesser sentence, which likely would accompany a pretrial disposition of this matter, outweighs the interest of the defendant in a speedy trial.

NOW, for the reasons set forth above and on the record in open Court on February 7, 2018, it is hereby

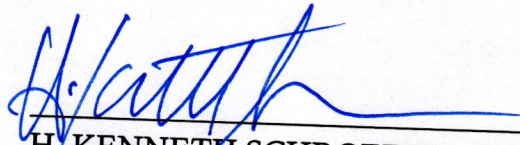
ORDERED, that the status conference is adjourned until February 28, 2018 at 10:00 a.m.; and it is further

ORDERED, that the time in this action from February 7, 2018, through and including February 28, 2018, is properly excluded from the time within which trial must commence, in

accordance with the Speedy Trial Act, pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (h)(7)(B)(iv).

The Court further finds that as of February 28, 2018, zero (0) days of Speedy Trial Act time will have elapsed in this action and seventy (70) days remain in the period within which trial must commence.

DATED: Buffalo, New York, February 8, 2018.


H. KENNETH SCHROEDER, JR.
United States Magistrate Judge